

STATE OF MICHIGAN
COURT OF APPEALS

LINDSEY N. PECIC,

Plaintiff-Appellant,

v

HAROLD JAMES WHITE,

Defendant-Appellee.

UNPUBLISHED

April 22, 2008

No. 274278

Ingham Circuit Court

LC No. 98-003187-DP

Before: Donofrio, P.J., and Sawyer and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from an order of the circuit court denying her motion to modify or remove a condition of the custody order regarding her domicile. We reverse and remand.

At the time of the original custody order, the parties resided in the Lansing area. The parties shared joint legal and physical custody of their minor child. A dispute arose in 2003 when plaintiff sought to move the child's residence to Farmington Hills. That dispute resulted in the trial court entering an order that provided that defendant would receive primary physical custody during the school year, but further provided that if plaintiff "moved back to the Lansing area" then the pre-existing shared physical custody arrangement would resume. The 2003 order further provided that plaintiff was not to commute from Farmington Hills with the child during the school week. Plaintiff moved her residence to East Lansing and the shared physical custody arrangement resumed.

In 2006, plaintiff filed a motion in the circuit court seeking permission to change the child's resident to Howell, where plaintiff and her husband were purchasing a home. The trial court summarily denied the motion, stating the prior order controlled. It is from this denial that plaintiff appeals.

Plaintiff's primary argument revolves around the applicability of MCL 722.31, which restricts moving a child's legal residence more than 100 miles away. Clearly, plaintiff's proposed move to Howell does not violate the restrictions of that statute. Rather, the relevant question is the applicability of the 2003 order in this case. In this respect, we conclude that the trial court failed to adequately address this issue. If the 2003 order remains applicable, then it only restricts plaintiff from moving the child's residence outside "the Lansing area" and from commuting from Farmington Hills with the child during the school week. Clearly, Howell is not

Farmington Hills and, in fact, is significantly closer to Lansing than is Farmington Hills. And, obviously, plaintiff would not be violating the prohibition on commuting from Farmington Hills. Therefore, the trial court should have resolved whether the 2003 order is still applicable to this case and, if so, whether Howell is within “the Lansing area” for purposes of the 2003 order. Accordingly, we reverse the order denying plaintiff’s motion and remand this matter to the trial court to resolve those issues.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Mark J. Cavanagh